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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

M.M.M., on behalf of his minor child,
J.M.A., et al.,

Plaintiffs,

v.

Jefferson Beauregard Sessions, III,
Attorney General of the United States,
et al.,

Defendant.

Case No. 3:18-cv-1832-DMS

Honorable Dana M. Sabraw

Ms. L, et al.,

Plaintiff,

v.

U.S. Immigration and Customs
Enforcement, et al.,

Defendant.

Case No. 3:18-cv-428-DMS

Honorable Dana M. Sabraw

**PLAINTIFFS' NOTICE OF
EMERGENCY MOTION AND
MOTION TO REQUIRE
IMPLEMENTATION OF
SETTLEMENT AGREEMENT**

TO ALL DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT, Plaintiffs in the above-caption cases will, and hereby do, seek relief from the Court through an emergency motion, to be heard and decided by the Court at the earliest time convenient for the Court.

Through this emergency motion, Plaintiffs seek to enforce the government's promises and commitments to this Court without waiting for final approval of the settlement agreement in this matter. The government now is reneging on those promises and commitments, and, in doing so, is causing severe prejudice to Plaintiffs that should be remedied immediately.

Given Defendants' prior representations on this issue, and the harm that further delay will cause to detained class members, Plaintiffs respectfully ask the Court to order the government to proceed with implementing the parties' settlement agreement and order any other relief the Court deems appropriate.

Plaintiffs' motion will be based upon this notice of motion and motion, the attached memorandum of points and authorities, and all the Court's files and records in this action.

1 October 10, 2018

HOGAN LOVELLS US LLP

/s/ Michael Maddigan

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forthcoming

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CERTIFICATE OF SERVICE

I hereby certify that I filed the foregoing NOTICE OF MOTION AND EMERGENCY MOTION TO REQUIRE IMPLEMENTATION OF SETTLEMENT AGREEMENT, with the Clerk of the Court through the ECF system on October 10, 2018. This system provided a copy to and effected service of this document on all parties.

Dated: October 10, 2018

HOGAN LOVELLS US LLP

By: /s/ Michael Maddigan
Michael Maddigan
Attorneys for Plaintiff

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**UNITED STATES DISTRICT COURT
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Honorable Dana M. Sabraw

**MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF PLAINTIFFS'
EMERGENCY MOTION TO
REQUIRE IMPLEMENTATION
OF SETTLEMENT AGREEMENT**

1 Plaintiffs file this emergency motion in light of a disturbing development on
 2 the heels of the Court’s preliminary approval of the parties’ settlement agreement.
 3 In short, the government indicated today that it intends to go back on its
 4 commitment – made to both Plaintiffs and this Court – to implement the settlement
 5 agreement prior to final approval for families who wish to avail themselves of the
 6 agreed-to procedures. Further delay is unacceptable for families that have already
 7 been in detention for months and are eager to go through procedures the
 8 government agreed to in the settlement.

9 During a status conference on September 14, 2018, in response to pointed
 10 questions from the Court, counsel for Defendants represented that the government
 11 would “get moving” and begin implementing the agreement without waiting for
 12 final approval:

13 **THE COURT:** Okay. And then what about the idea of starting now.
 14 It seems to me that the vast majority of *Ms. L.* class members and
 15 *MMM* class members, once the class is certified, are going to be
 onboard and ready to proceed. *Is it possible to start right away?*

16 The idea of class certification and final approval of the
 17 settlement and a notice and opportunity to object really, I think, will
 18 apply to a very small handful of potential class members, if any. *And*
it seems to me that the process could get underway sooner rather than
later, and not have to wait for final approval. What would the
government’s view be?

19 **MR. STEWART:** Your honor, our tentative view would be that *I*
 20 *think that that is appropriate and we could get moving on this.*

21 I would just say if I do come – if it does come to my attention,
 22 you know, an impediment or sort of a reason otherwise, may we bring
 23 that to the court’s attention if we realize it?

24 But my hope is with most – you know, as with other plans we
 25 have approved it consistent with our desire to move things
 26 expeditiously but orderly, *we would want to just get moving. If it is a*
 27 *good plan, we should get moving.*

28 Ex. 15 at 9-10 (emphasis added). The Court then stated that “the parties ought to
 get moving,” and that “to the extent you can identify plaintiffs – children and
 parents – who want to get started with the various proceedings under 235 or 240,
that we ought to start that right away . . . and then get the process going.” *Id.* at 10
 (emphasis added). The Court also indicated that it wanted the parties to “give a

1 status as to the various proceedings under 235, 240, whatever they might be under
 2 the proposed settlement, so that the Court and the public can keep track of the
 3 parties' efforts and progress with respect to these asylum claims." *Id.* at 11; *see*
 4 *also id.* at 14 (Court inquiring about timeline of implementation based on
 5 assumption that "[w]e get started right now" and "235, 240 hearings and all of the
 6 things that are contemplated in the proposed settlement are moving efficiently and
 7 from the earliest possible date"). Thus, the Court (and Plaintiffs) clearly believed
 8 that class members would be able to pursue the processes described in the
 9 agreement before any final approval order.

10 The government never brought any concerns about this commitment to the
 11 Court's attention. In fact, it *reiterated* its commitment in an e-mail to Plaintiffs on
 12 September 20, 2018. That e-mail stated that "[t]he government is undertaking to
 13 implement the parties' agreement in accordance with the court's tentative approval
 14 at the last status conference." Ex. 16. Defendants' counsel also stated: "As the
 15 government identifies individuals to be processed under the different provisions of
 16 the agreement, and starts to move those processes forward, it is important that we
 17 know ASAP . . . which parents and children wish to pursue the processes set forth
 18 in the agreement, so that there is likewise no unneeded delay in enabling those class
 19 members to move forward." *Id.* Plaintiffs have relied upon this representation over
 20 the last several weeks, as described in more detail below.

21 Now, the government has done an about-face. By e-mail today, Defendants'
 22 counsel stated that the government will *not* move forward with implementing the
 23 settlement other than to accept class members' executed notice and waiver forms.
 24 Defendants' counsel refused to confirm that it would comply with the schedule in
 25 Paragraph 1(g) of the agreement and move forward with the interviews
 26 contemplated in the settlement. Thus, the government is not moving forward with
 27 interviews for any class members, including the more than 60 detained parents and
 28 children Plaintiffs have identified so far as wanting to stay in the United States and

1 invoke the settlement procedures. All of these parents have signed the court-
 2 approved notice and waiver form, and their names and executed forms have been
 3 provided to the government. Per the Court’s instruction, the parties should “get the
 4 process going” for these families by providing the agreed-to interviews and
 5 reporting on the results.

6 There is no reason for delay at this point, and every reason to move forward
 7 expeditiously. The Court issued a temporary restraining order *M.M.M.* because it
 8 found that Plaintiffs were likely to succeed on their claim that they have a right to
 9 certain asylum procedures prior to removal – procedures which the government
 10 agreed to in the settlement. The Court has described the settlement agreement as
 11 “excellent” and granted preliminary approval without reservation just yesterday.
 12 As described above, the Court has also emphasized that parents and children should
 13 receive the procedures outlined in the agreement prior to final approval. Most
 14 importantly, these families should have received due process when they first
 15 crossed the border together *months* ago. Instead, they suffered intense trauma due
 16 to the government’s illegal separation policy, and they are now suffering through
 17 months of prolonged, unnecessary detention. Delay will only further the harm the
 18 government has already inflicted on these families. Their asylum claims should be
 19 heard according to the agreed-to procedures now, not six or more weeks from now.

20 The government stated today that implementing the settlement prior to final
 21 approval will cause it to incur the burdens of the settlement without any of the
 22 benefits. Not so. Any class member who elects to receive the procedures described
 23 in the agreement will be bound by the terms of the agreement – including the
 24 release. Moreover, every day that the government delays implementation of the
 25 agreement is a day that parents and children decide enough is enough, and choose
 26 to accept removal rather than wait in detention for their asylum claims to be heard.
 27 Indeed, just last week Plaintiffs notified the government that over 40 detained
 28 families decided to accept removal – instead of receive due process – because they

1 simply could not wait in detention any longer. While that kind of result may be
2 optimal from the government's perspective, it defeats the purpose of this case, the
3 parties' settlement, and this Court's order granting a temporary restraining order. It
4 is completely at odds with this Court's desire for a solution that swiftly resolves
5 Plaintiffs' claims.

6 The government's reversal is made worse by the fact that it prejudices
7 Plaintiffs, who relied on it in multiple ways over the least several weeks. For
8 example, Plaintiffs patiently tolerated the government's unnecessary delay of the
9 preliminary approval process. Plaintiffs first sent the government draft preliminary
10 approval papers less than a week after the September 14 status conference, on
11 September 19. The government then insisted on multiple rounds of minor line edits
12 to those papers, including a number of edits in the second and third rounds that it
13 could have made in the rounds prior. Due to this delay, Plaintiffs could not file the
14 motion for preliminary approval until October 5 (over two weeks after Plaintiffs
15 sent the first draft to the government), and had to push back the proposed date of
16 the fairness hearing to November 15. The only reason Plaintiffs tolerated this delay
17 is because of the government's representation that it would implement the
18 settlement agreement prior to final approval. Plaintiffs also would have proposed a
19 more aggressive notice plan and schedule for final approval had the government not
20 committed to begin implementation immediately. Finally, the families who already
21 signed the notice and waiver form did so based on the reasonable belief that their
22 interviews would proceed expeditiously – not several weeks from now.

23 Given Defendants' prior representations on this issue, the Court's express
24 desire move this process along with alacrity, and the harm that further delay will
25 cause to detained class members, Plaintiffs respectfully ask the Court to order the
26 government to proceed with implementing the parties' settlement agreement and
27 order any other relief the Court deems appropriate.

1 October 10, 2018

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Class Counsel For Removed Parents

CERTIFICATE OF SERVICE

I hereby certify that I filed the foregoing MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' EMERGENCY MOTION TO REQUIRE IMPLEMENTATION OF SETTLEMENT AGREEMENT, with the Clerk of the Court through the ECF system on October 10, 2018. This system provided a copy to and effected service of this document on all parties.

Dated: October 10, 2018

HOGAN LOVELLS US LLP

By: /s/ Michael Maddigan

Michael Maddigan
Attorneys for Plaintiff

M.M.M., on behalf of his minor child, J.M.A., et al. v. Jefferson Beauregard Sessions, III, Attorney General of the United States, et al.

**EXHIBITS TO PLAINTIFFS' EMERGENCY MOTION TO REQUIRE
IMPLEMENTATION OF SETTLEMENT AGREEMENT**

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EXHIBIT 15

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BEFORE HONORABLE DANA M. SABRAW, JUDGE PRESIDING

_____)	
MS. L, ET AL.,)	
)	CASE NO. 18CV0428-DMS
PETITIONERS-PLAINTIFFS,)	18CV1626-DMS
)	18CV1832-DMS
VS.)	
)	SAN DIEGO, CALIFORNIA
U.S. IMMIGRATION AND CUSTOMS)	SEPTEMBER 14, 2018
ENFORCEMENT ("ICE"), ET AL.,)	1:00 P.M. CALENDAR
)	
RESPONDENTS-DEFENDANTS.)	
-----)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS
TELEPHONIC STATUS CONFERENCE

REPORTED BY:

LEE ANN PENCE,
OFFICIAL COURT REPORTER
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ADAM SIEGLER, ESQ.
GUILLERMO STAMPUR, ESQ.

1 SAN DIEGO, CALIFORNIA - FRIDAY, SEPTEMBER 14, 2018 - 2:17 P.M.

2 * * *

3 **THE CLERK:** NO. 23 ON CALENDAR, CASE NO. 18CV0428,
4 MS. L. VERSUS U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; ON FOR
5 STATUS CONFERENCE.

6 **THE COURT:** GOOD AFTERNOON. THIS IS JUDGE SABRAW.
7 I HAVE A NUMBER OF APPEARANCES THAT MY COURTROOM DEPUTY GAVE
8 ME. LET ME READ THE NAMES FOR WHO I HAVE ON THE LINE.

9 FOR THE GOVERNMENT, FOR DEFENDANTS, I HAVE
10 MS. FABIAN, MR. STEWART. FOR MS. L. PLAINTIFFS MR. GELERNT.
11 NTC PLAINTIFFS MS. LEVY. MMM, MR. BEST AND MR. BERNICK. FOR
12 THE RGH, ONE OF THE NEW YORK CASES, MS HELLER, MR. REX CHEN.
13 ON THE DORA CASE THERE ARE APPEARANCES FROM MS. SHEBAYA AND
14 MR. BARMEYER.

15 THEN I ALSO HAVE THE FOLLOWING NAMES: MR. ADAM
16 SIEGLER, MS. CAROLINE HELLER, MR. JACK MCBRIDE, AND
17 MR. GUILLERMO, I THINK, STAMPUR.

18 HAVE I MISSED ANYONE? OKAY. HEARING NO PROTESTS WE
19 WILL ASSUME, WITH THAT, LINEUP OF COUNSEL.

20 THEN LET'S GO AHEAD AND GET RIGHT INTO THE ISSUES.

21 LET'S START FIRST WITH THE PROPOSED SETTLEMENT
22 INVOLVING MMM, MS. L., AND THE DORA PLAINTIFFS, ALL OF THOSE
23 INDIVIDUALS. AND PERHAPS I CAN START ON A PROCEDURAL LEVEL
24 FIRST.

25 I RECEIVED A LETTER FROM MS. WEISS AND MS. GLYNN ON

SEPTEMBER 14, 2018

1 BEHALF OF THE CATHOLIC CHARITIES COMMUNITY SERVICES, THE
2 ARCHDIOCESE OF NEW YORK, FOR CERTAIN OF THE CHILDREN WHO MAY
3 FALL WITHIN THE MMM CLASS.

4 THEY ARE INDICATING THAT ANY SETTLEMENT WOULD FIRST
5 HAVE TO INVOLVE CLASS CERTIFICATION AND APPROVAL PURSUANT TO
6 RULE 23.

7 THAT SEEMS CORRECT TO ME. SO I GUESS THAT WOULD BE
8 THE FIRST QUESTION IS, THIS SETTLEMENT WOULD HAVE TO GO
9 THROUGH A PROPOSED CLASS CERTIFICATION AND SETTLEMENT, AM I
10 CORRECT? AND THAT WOULD THEN PROVIDE --

11 **MR. BERNICK:** YOUR HONOR, THIS IS JUSTIN BERNICK,
12 COUNSEL FOR MMM. AND I BELIEVE I CAN SPEAK FOR THE MS. L.
13 PLAINTIFFS AND DORA PLAINTIFFS AND MMM PLAINTIFFS ON THIS
14 ISSUE, BUT THEY SHOULD CHIME IN IF THEY HAVE OTHER THOUGHTS.

15 YOUR HONOR, WE DO BELIEVE THAT RULE 23(E) IMPOSES
16 OBLIGATIONS WHEN A CLASS -- WHEN A CASE IS BEING SETTLED ON A
17 CLASS-WIDE BASIS, AND OUR GOAL WOULD BE TO ADDRESS THE ISSUES
18 UNDER RULE 23(E) AS QUICKLY AND EFFICIENTLY AS WE POSSIBLY
19 COULD. AND WE CERTAINLY LOOK TO YOUR HONOR FOR GUIDANCE ON
20 HOW BEST TO ADDRESS THOSE ISSUES.

21 WE HAD -- SEPARATELY WE HAVE BEEN SPEAKING WITH
22 NUMEROUS ORGANIZATIONS AND INDIVIDUALS, AS YOU MIGHT EXPECT,
23 INCLUDING MS. CATHERINE WEISS WHO SUBMITTED THIS LETTER, AND
24 WE HAVE ALSO BEEN COMMUNICATING SINCE THE SETTLEMENT AGREEMENT
25 WAS FILED WITH OTHER INTERESTED PARTIES, AND TRYING TO MAKE

SEPTEMBER 14, 2018

1 SURE THAT EVERYONE KNOWS ABOUT THE PLAN AND WHAT THE RIGHTS
2 AND OBLIGATIONS ARE UNDER THE AGREEMENT. BUT WE DO BELIEVE
3 THAT WE NEED TO MAKE SURE THAT WE COMPLY WITH RULE 23(E) AND
4 COME UP WITH A PLAN FOR DOING SO.

5 ON THIS CALL, YOUR HONOR, I DON'T BELIEVE THAT THE
6 MS. L. PLAINTIFFS, DORA PLAINTIFFS, OR MMM PLAINTIFFS HAVE A
7 CERTAIN IDEA AS TO WHAT THAT PLAN SHOULD BE. WE ARE HAPPY,
8 THOUGH, YOUR HONOR, TO MEET AND CONFER WITH THE GOVERNMENT
9 ABOUT THAT PLAN AND COME FORWARD WITH A PROPOSAL.

10 FRANKLY, YOUR HONOR, OUR FOCUS HAS BEEN ON -- AS YOU
11 CAN SEE IT IS A DETAILED PLAN, TRYING TO MAKE SURE THAT WE
12 COULD REACH AGREEMENT WITH THE GOVERNMENT ON WHAT THE
13 PROCEDURES SHOULD BE AND COME UP WITH A SETTLEMENT THAT
14 ADEQUATELY PROTECTED THE INTERESTS OF THE CLASS, AND HAD BEEN
15 LESS SO ON THE PROCEDURAL ISSUES. BUT WE DO BELIEVE THEY
16 SHOULD BE ADDRESSED.

17 **THE COURT:** YES.

18 MR. STEWART, I ASSUME YOU AGREE.

19 **MR. STEWART:** YES, YOUR HONOR. I THINK THE
20 APPROPRIATE APPROACH IS FOR YOUR HONOR TO ENTER AN ORDER
21 AFFIRMING THAT THE RULE 23, YOU KNOW, ACCEPTING THE, YOU KNOW,
22 THE STIPULATED CLASS AND JUST CONFIRMING THAT THE RULE 23
23 CRITERIA ARE SATISFIED JUST TO MAKE CLEAR THAT THIS IS A
24 BINDING SETTLEMENT AND IT RESOLVES THE RIGHTS AND CLAIMS AS
25 STATED IN THE AGREEMENT.

SEPTEMBER 14, 2018

1 THE POINT I MIGHT EMPHASIZE, YOUR HONOR -- AND I
2 THINK MR. BERNICK DID WELL TO HIT THIS POINT.

3 I JUST WANT TO EMPHASIZE THAT I THINK WE HAVE BEEN
4 VERY CAREFUL, I THINK, THROUGHOUT THIS PROCESS TO MAKE
5 SURE BOTH SIDES -- YOU KNOW, MR. BERNICK INDICATED A LOT OF
6 CONTACT WITH STAKEHOLDERS ON THE PLAINTIFFS' SIDE AND JUST A
7 LOT OF WORK TO MAKE SURE ALL DIFFERENT INTERESTS WERE
8 ACCOUNTED FOR FOR THE FOLKS COVERED BY THE SETTLEMENT
9 AGREEMENT.

10 SO GIVEN ALL OF THAT AND THE AMOUNT OF EFFORT AND
11 COMPREHENSIVENESS OF THIS AGREEMENT, YOUR HONOR, I WOULD
12 EMPHASIZE AND AGREE THAT THE RULE 23 ISSUES AND THOSE
13 PROCEDURAL MATTERS CAN BE RESOLVED QUITE EXPEDITIOUSLY AND
14 NEEDN'T -- AND WOULD CALL FOR JUST VERY, VERY MINIMAL, YOU
15 KNOW, FURTHER WORK TO GET APPROVAL SO THAT WE CAN ALL MOVE
16 FORWARD WITH THIS PLAN AND GET THINGS ON THE ROAD.

17 SO I WOULD EMPHASIZE EXPEDITIOUSNESS, AND I THINK WE
18 ARE VERY CLOSE ON, REALLY, ALL POINTS.

19 **THE COURT:** I AGREE WITH THAT. I THINK MOVING AS
20 QUICKLY AS POSSIBLE IN AN ORDERLY FASHION IS THE WAY TO GO,
21 WITH, OF COURSE, THE OPPORTUNITY FOR ANY POTENTIAL CLASS
22 MEMBER TO OBJECT AND TO BE HEARD UNDER RULE 23.

23 BUT IT SEEMS TO ME THAT THE -- WHAT I WOULD PROPOSE
24 IS THAT IT MAY BE PRUDENT FOR COUNSEL TO MEET AND CONFER AND
25 SUBMIT TO THE COURT A JOINT MOTION AND ORDER ADDRESSING THE

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1 RULE 23 ISSUES. SO I THINK WHAT THAT WOULD ENCOMPASS IS A
2 PROPOSED CLASS CERTIFICATION AND ESSENTIALLY APPROVAL OF THE
3 SETTLEMENT SUBJECT TO AN OPPORTUNITY FOR ANYONE TO OBJECT AND
4 TO BE HEARD.

5 DO YOU AGREE?

6 **MR. STEWART:** THE GOVERNMENT THINKS THAT THAT IS AN
7 APPROPRIATE APPROACH, YOUR HONOR. AND I WOULD I THINK WE
8 SHOULD DO THAT EXPEDITIOUSLY. AND THAT IT SOUNDS LIKE YOUR
9 HONOR IS ENVISIONING SOMETHING BRIEF BUT JUST COVERS THOSE KEY
10 ISSUES, THE RULE 23 ISSUES, AND APPROVAL, PROPOSED CLASS
11 CERTIFIED, AND NOT SOMETHING VERY ELABORATE OR LENGTHY, JUST
12 SOMETHING SUFFICIENT.

13 **THE COURT:** YES. I THINK WHAT'S IMPORTANT IS THE
14 DUE PROCESS, SO THE OPPORTUNITY TO BE HEARD IF THERE IS
15 SOMEONE WHO IS GOING TO OBJECT.

16 IN CONCEPT I WOULD SAY THAT THE PROPOSED
17 SETTLEMENT -- THESE ARE MY TENTATIVE OBSERVATIONS, WITHOUT THE
18 BENEFIT OF ANYONE HAVING AN OBJECTION. BUT IT APPEARS THAT
19 GIVEN THE JOINT SUBMISSION THIS IS A VERY DETAILED, WELL
20 THOUGHT OUT PROPOSAL THAT INVOLVES MANY, MANY STAKEHOLDERS.

21 AND FROM THE COURT'S READING OF THE PROPOSED
22 SETTLEMENT IT APPEARS EXCELLENT. I AM VERY IMPRESSED WITH THE
23 DETAIL OF THE POCKET AREAS THAT ARE COVERED DEPENDING ON THE
24 PARTICULAR CIRCUMSTANCES THAT MIGHT BE PRESENT TO PARTICULAR
25 PARENTS AND/OR CHILDREN. AND THEN PROVIDING FOR THE PROCESS

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1 THAT WOULD APPLY IN THOSE PARTICULAR CIRCUMSTANCES, WHETHER IT
2 IS A 235 OR A 240 HEARING, OR THOSE KINDS OF DETAILS. IT
3 SEEMS THAT NO STONE WAS LEFT UNTURNED.

4 AND THAT THE PROPOSAL EXEMPLIFIES GOOD FAITH ON
5 BEHALF OF ALL, AND PARTICULARLY THE GOVERNMENT, IN RECOGNIZING
6 THESE RIGHTS AND AFFORDING OF AN ORDERLY PROCESS AND
7 OPPORTUNITY FOR THESE CLASS MEMBERS IN MS. L. AND PUTATIVE
8 CLASS MEMBERS IN MMM, AS WELL AS THE DORA PLAINTIFFS, TO
9 PURSUE THESE AVENUES.

10 SO ABSENT HEARING FROM SOMEONE, EITHER NOW OR AT A
11 LATER TIME ON AN OBJECTION, WRITTEN OBJECTION, IT SEEMS TO ME
12 THAT THIS IS AN EXCELLENT PROPOSAL AND WE OUGHT TO MOVE
13 FORWARD AS QUICKLY AS POSSIBLE.

14 SO WHAT I WOULD PROPOSE IS THAT COUNSEL MEET AND
15 CONFER, AND THEN SUBMIT A JOINT MOTION AND ORDER ADDRESSING
16 THE CLASS CERTIFICATION AND PRELIMINARY APPROVAL OF THE
17 SETTLEMENT, WITH THE OPPORTUNITY FOR ANYONE TO OBJECT. AND
18 THERE COULD BE A TIMELINE SET OUT FOR OBJECTIONS TO BE FILED
19 AND A TIME IN WHICH ANY OBJECTIONS MIGHT BE HEARD.

20 IN THAT REGARD ALSO, JUST LOOKING TO THE TIMELINE OF
21 ALL OF THIS. THE NINTH CIRCUIT HAS STAYED THE GOVERNMENT'S
22 APPEAL IN MS. L. TO NOVEMBER 9.

23 WHAT WOULD THE GOVERNMENT'S POSITION BE NOW? WOULD
24 YOU BE SEEKING TO CONTINUE THAT NOVEMBER 9 TIME FRAME AS WE
25 GET CLOSER TO THAT DATE?

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1 **MR. STEWART:** YOUR HONOR, I DON'T THINK A DECISION
2 IS MADE ON THAT. MY GUESS IS THAT WE WOULD SIMILARLY
3 CONTINUE -- YOU KNOW, WE HAVE TO SEE WHAT THE SOLICITOR
4 GENERAL MAY DECIDE ON THERE, BUT IT COULD VERY WELL BE THAT WE
5 MIGHT SEEK, YOU KNOW, MORE TIME TO JUST MAKE SURE THERE IS NO
6 DISRUPTION TO THE ONGOING IMPLEMENTATION OF THE PRELIMINARY
7 INJUNCTION.

8 OBVIOUSLY THAT IS A WAYS OUT, SO HOPEFULLY WE WILL
9 HAVE A SIGNIFICANT AMOUNT OF RESOLUTION BY THAT TIME, YOUR
10 HONOR. BUT I DON'T THINK WE HAVE ANY SORT OF FURTHER DECISION
11 FROM THE GOVERNMENT AS TO ITS PROCESSES OR WHERE THINGS STAND.

12 **THE COURT:** OKAY. AND THEN WHAT ABOUT THE IDEA OF
13 STARTING NOW. IT SEEMS TO ME THAT THE VAST MAJORITY OF MS. L.
14 CLASS MEMBERS AND MMM CLASS MEMBERS, ONCE THE CLASS IS
15 CERTIFIED, ARE GOING TO BE ONBOARD AND READY TO PROCEED. IS
16 IT POSSIBLE TO START RIGHT AWAY?

17 THE IDEA OF CLASS CERTIFICATION AND FINAL APPROVAL
18 OF THE SETTLEMENT AND A NOTICE AND OPPORTUNITY TO OBJECT
19 REALLY, I THINK, WILL APPLY TO A VERY SMALL HANDFUL OF
20 POTENTIAL CLASS MEMBERS, IF ANY. AND IT SEEMS TO ME THAT THE
21 PROCESS COULD GET UNDERWAY SOONER RATHER THAN LATER, AND NOT
22 HAVE TO WAIT FOR FINAL APPROVAL.

23 WHAT WOULD THE GOVERNMENT'S VIEW BE?

24 **MR. STEWART:** YOUR HONOR, OUR TENTATIVE VIEW WOULD
25 BE THAT I THINK THAT THAT IS APPROPRIATE AND WE COULD GET

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1 MOVING ON THIS.

2 I WOULD JUST SAY IF I DO COME -- IF IT DOES COME TO
3 MY ATTENTION, YOU KNOW, AN IMPEDIMENT OR SORT OF A REASON
4 OTHERWISE, MAY WE BRING THAT TO THE COURT'S ATTENTION IF WE
5 REALIZE IT?

6 BUT MY HOPE IS WITH MOST -- YOU KNOW, AS WITH OTHER
7 PLANS WE HAVE APPROVED IT CONSISTENT WITH OUR DESIRE TO MOVE
8 THINGS EXPEDITIOUSLY BUT ORDERLY, WE WOULD WANT TO JUST GET
9 MOVING. IF IT IS A GOOD PLAN, WE SHOULD GET MOVING.

10 **THE COURT:** MR. BERNICK, DO YOU AGREE?

11 **MR. BERNICK:** YOUR HONOR, THIS IS JUSTIN BERNICK FOR
12 THE MMM PLAINTIFFS.

13 WE AGREE WITH THAT.

14 **THE COURT:** OKAY. SO ON THAT, I WOULD DECLINE TO
15 MAKE ANY ORDERS BUT JUST INVITE THE PARTIES, ON A
16 MEET-AND-CONFER BASIS, START THE PROCESS WITH THE IDEA THAT
17 THE COURT, IN CONCEPT, APPROVES THE SETTLEMENT. OF COURSE,
18 RESERVING FINAL DETERMINATION BASED ON ANY OBJECTION THAT
19 MIGHT BE MADE, BUT IN CONCEPT THE PARTIES OUGHT TO GET MOVING.
20 AND TO THE EXTENT YOU CAN IDENTIFY PLAINTIFFS -- CHILDREN AND
21 PARENTS -- WHO WANT TO GET STARTED WITH THE VARIOUS
22 PROCEEDINGS UNDER 235 OR 240, THAT WE OUGHT TO START THAT
23 RIGHT AWAY. AND I WILL LEAVE IT TO THE PARTIES TO MEET AND
24 CONFER AND IDENTIFY THOSE INDIVIDUALS, AND THEN GET THE
25 PROCESS GOING.

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1 WE WILL ALSO -- AS WE GO ALONG I WILL ASK THAT THIS
2 PROCESS BE ROLLED INTO THE STATUS REPORT, SO THAT DURING THIS
3 WEEKLY STATUS REPORT THE PARTIES CAN INCLUDE A STATUS ON THIS
4 PROPOSED SETTLEMENT AND IDENTIFY THE PARENTS AND THE CHILDREN.
5 AND GIVE A STATUS AS TO THE VARIOUS PROCEEDINGS UNDER 235,
6 240, WHATEVER THEY MIGHT BE UNDER THE PROPOSED SETTLEMENT, SO
7 THAT THE COURT AND THE PUBLIC CAN KEEP TRACK OF THE PARTIES'
8 EFFORTS AND PROGRESS WITH RESPECT TO THESE ASYLUM CLAIMS.

9 ARE THERE ANY OTHER THOUGHTS ON THIS PROPOSED
10 SETTLEMENT? OTHERWISE WE WILL MOVE TO THE JOINT STATUS
11 REPORT.

12 THE IDEA WOULD BE THAT ON THE PROPOSED SETTLEMENT
13 THE PARTIES WILL SUBMIT SOMETHING TO THE COURT BY NEXT
14 THURSDAY, 3:00 P.M., OR SOONER, ON A JOINT MOTION AND ORDER
15 FOR CLASS CERTIFICATION AND APPROVAL OF THE SETTLEMENT.

16 ANYTHING ELSE?

17 **MR. STEWART:** YOUR HONOR, I DO HAVE ONE QUESTION ON
18 THIS.

19 THE TRO ITSELF IS -- AS YOU KNOW, THE APPROVAL OF
20 THE AGREEMENT WOULD -- WOULD, AS IT STANDS, LIFT THE TRO
21 ITSELF. IS YOUR INTENTION IN GOING FORWARD WITH THE AGREEMENT
22 THAT THE TRO WOULD BE LIFTED AS TO FOLKS THAT REACHED THE
23 APPROPRIATE POINT IN THE PROCESS WHERE THEY CAN RETURN TO
24 THEIR COUNTRY OF ORIGIN? OR HOW WOULD YOU SEE THE TRO AS
25 BEING AFFECTED BY THIS -- BY THIS KIND OF A PRELIMINARY

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1 APPROVAL OR THE DIRECTIVE TO PROCEED UNDER THE PLAN?

2 **THE COURT:** I THINK, AS THE PARTIES PROPOSE, IT CAN
3 BE LIFTED IN APPROPRIATE CASES. AND I THINK THE WAY WE
4 DISCUSSED IT A HEARING OR TWO AGO IS THAT THE PARTIES COULD
5 SIMPLY MEET AND CONFER AND IDENTIFY IN WRITING FOR CERTAIN
6 NAMED INDIVIDUALS A LIFTING OF THE TRO SO THAT THOSE PERSONS
7 COULD BE REUNIFIED IN THEIR HOME COUNTRY OR REMOVED, WHATEVER
8 THE CASE MAY BE.

9 WOULDNT'T THAT BE APPROPRIATE?

10 **MR. STEWART:** I THINK THAT'S -- I THINK, YOUR HONOR,
11 THAT THAT MAY BE A WORKABLE APPROACH FOR THIS PRELIMINARY
12 PIECE.

13 AM I UNDERSTANDING THAT YOUR HONOR IS SUGGESTING
14 THAT THE PARTIES WOULD BE ABLE TO SAY, OKAY -- YOU KNOW, THEY
15 WOULD COMMUNICATE AMONGST THEMSELVES IF THEY AGREE THAT
16 SOMEBODY -- YOU KNOW, THAT TRO WAS LIFTED AS TO THAT PERSON
17 THEY COULD THEN PROCEED WITH REPATRIATION OR WHATEVER THE
18 APPROPRIATE PATH IS, OR WOULD YOU WANT THE INDIVIDUALS BROUGHT
19 TO THE COURT IN THOSE CASES?

20 **THE COURT:** THE FORMER, SO THAT THE PARTIES SIMPLY
21 WORK THROUGH IT AND IDENTIFY THOSE INDIVIDUALS, AND THEN ALLOW
22 THEM TO BE REPATRIATED WITHOUT FURTHER COURT INVOLVEMENT.

23 DO YOU AGREE, MR. BERNICK?

24 **MR. BERNICK:** I DO, YOUR HONOR. I AM SPEAKING,
25 AGAIN, FOR THE MMM PLAINTIFFS, AND I WILL LET THE MS. L. AND

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1 DORA PLAINTIFFS EXPLAIN IF THEY HAVE A DIFFERENT VIEW.

2 BUT FROM OUR PERSPECTIVE, ONCE A CHILD RECEIVES THE
3 PROCESS UNDER THIS AGREEMENT AND THEY HAVE NO OBJECTIONS TO
4 THE SETTLEMENT, THEN WE SHOULD MOVE FORWARD. AND IF THE
5 RESULT IS REMOVAL, THEN THE TRO SHOULD BE LIFTED AS TO THAT
6 INDIVIDUAL. THAT WOULD BE OUR POSITION.

7 **THE COURT:** OKAY.

8 MR. GELERNT, DO YOU AGREE?

9 **MR. GELERNT:** YES, YOUR HONOR.

10 **THE COURT:** AND, IS IT MS. SHEBAYA OR MR. BARMEYER,
11 DO YOU AGREE ON BEHALF OF THE DORA?

12 **MR. BARMEYER:** YES. THIS IS MR. BARMEYER, YOUR
13 HONOR. THANK YOU.

14 YES, WE AGREE AS WELL. AND WE WILL NEED TO MEET AND
15 CONFER WITH THE GOVERNMENT, AGREE ON MOVING THIS FORWARD AS
16 EXPEDITIOUSLY AS POSSIBLE AND GETTING THE PROCESS GOING.

17 ONE PART OF THE AGREEMENT IS TO ALLOW THE FAMILIES
18 TO HAVE COUNSEL IN THE PROCESS, AND SO -- AND WE DON'T -- WE
19 WILL NEED TO BE WORKING WITH THE STAKEHOLDERS TO SEE IF WE CAN
20 TRY TO COORDINATE THAT. AND SO WE WILL NEED TO SPEAK WITH THE
21 GOVERNMENT ABOUT HOW QUICKLY WE CAN MOVE FORWARD WITH THE
22 PROCESS.

23 **THE COURT:** OKAY. VERY GOOD.

24 THEN JUST A QUESTION ON THE GENERAL TIMELINE. DO
25 COUNSEL HAVE AN IDEA OF HOW LONG THIS PROCESS IS GOING TO

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1 TAKE? SO LET'S ASSUME BEST CASE SCENARIO, EVERYTHING GOES
2 SMOOTHLY. WE GET STARTED RIGHT NOW. 235, 240 HEARINGS AND
3 ALL OF THE THINGS THAT ARE CONTEMPLATED IN THE PROPOSED
4 SETTLEMENT ARE MOVING EFFICIENTLY AND FROM THE EARLIEST
5 POSSIBLE DATE; WHAT DOES THIS TIMELINE LOOK LIKE? DOES ANYONE
6 KNOW?

7 I ASSUME THERE IS GOING TO BE DIFFERENT TIME FRAMES
8 DEPENDING ON THE TYPE OF HEARING THAT IS INVOLVED.

9 **MR. STEWART:** I THINK THAT IS RIGHT, YOUR HONOR.
10 SOME FOLKS IN SOME AREAS WILL BE QUITE EXPEDITIOUS, OTHER
11 FOLKS WHO, FOR EXAMPLE, MAY BE GOING TO 240 PROCEEDINGS WILL
12 TAKE A BIT OF A LONGER COURSE, YOU KNOW, WOULD BE THE
13 EXPECTATION.

14 WHAT I CAN SAY IS IF THE GOVERNMENT IS LOOKING TO
15 MAKE SURE THAT, YOU KNOW, WHEREVER IT CAN, YOU KNOW, MAKE SURE
16 THAT THINGS MOVE SWIFTLY, IT WANTS TO KEEP AN EYE ON THAT AND
17 MAKE SURE THAT EVERYTHING IS MOVING AS, YOU KNOW,
18 EXPEDITIOUSLY AS THEY CAN.

19 IF I CAN GET MORE CLARITY ON TIMING I CAN DO SO,
20 YOUR HONOR.

21 **THE COURT:** I THINK IT IS FAIR TO SAY THAT WITH SOME
22 IT MAY JUST BE A MATTER OF WEEKS, WITH OTHERS, PARTICULARLY
23 WITH 240 HEARINGS, IT MAY BE MONTHS?

24 **MR. STEWART:** I THINK SO, YOUR HONOR, YES. THAT
25 SOUNDS RIGHT.

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EXHIBIT 16

Best, Zachary W.

From: Stewart, Scott G. (CIV) <Scott.G.Stewart@usdoj.gov>
Sent: Thursday, September 20, 2018 12:58 PM
To: Bernick, Justin W.; Lee Gelernt; Best, Zachary W.; Anand Balakrishnan; Fleming, John
Cc: Weymouth, T. Clark; Stephen Kang; Spencer Amdur; Daniel Galindo; Judy Rabinovitz; Simon Sandoval-Moshenberg; Barmeyer, Wilson; Sirine Shebaya; Levy, Jennifer; Flentje, August (CIV); Robins, Jeffrey (CIV); Fabian, Sarah B (CIV)
Subject: MMM/Ms. L follow-up

Counsel:

The government is undertaking to implement the parties' agreement in accordance with the court's tentative approval at the last status conference. Could you please let us know as soon as possible how you plan to implement the waiver provision in paragraph 8 of the agreement on your end? (Paragraph 8 provides that "*Ms. L* counsel, *M.M.M.* counsel, or *Dora* counsel may identify class members who wish to waive the procedures described herein and be promptly removed to their country of origin," and it provides that plaintiffs' counsel "will promptly develop a process for obtaining and documenting such a choice through a knowing and voluntary waiver.") As the government identifies individuals to be processed under the different provisions of the agreement, and starts to move those processes forward, it is important that we know ASAP both: (a) which parents and children do not want to move forward under the agreement—and instead wish to waive those rights and return to their COO—so that we do not inadvertently put them in a process that would slow down their desire to return to their COO; and (b) which parents and children wish to pursue the processes set forth in the agreement, so that there is likewise no unneeded delay in enabling those class members to move forward. Can you please confirm that such a process is being developed, and let us know when we can expect that you will be able to confirm (perhaps on a rolling basis) whether individual class members wish either to waive their rights or to proceed under the agreement?

Thank you.

MICHAEL M. MADDIGAN (SBN 163450)
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Attorney for *M.M.M.* Plaintiffs

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION**

M.M.M., on behalf of his minor child,
J.M.A., et al.,

Plaintiffs,

v.

Jefferson Beauregard Sessions, III,
Attorney General of the United States,
et al.,

Defendants.

Case No. 3:18-cv-1832-DMS

Honorable Dana M. Sabraw

Ms. L, et al.,

Plaintiff,

v.

U.S. Immigration and Customs
Enforcement, et al.,

Defendant.

Case No. 3:18-cv-428-DMS

Honorable Dana M. Sabraw

**[PROPOSED] ORDER
GRANTING PLAINTIFFS'
EMERGENCY MOTION TO
REQUIRE IMPLEMENTATION
OF SETTLEMENT AGREEMENT**

